

1 breakfast person since we were unaware of her
2 employment."

3 A. We would be myself and the owners.

4 Q. In that second paragraph, "When Ms. Palmer came
5 on her first weekend, she was screaming because she had
6 seen someone already working the breakfast area." Am I
7 reading this accurately, second paragraph, second
8 sentence?

9 A. Yes.

10 Q. "We let her work the weekend and on the following
11 week she came in for her paycheck." So who is we, and we
12 let her work the weekend?

13 A. Myself and the -- we being Sleep Inn.

14 Q. And then it says, "The week after she came in for
15 her paycheck and I had a meeting with her to discuss
16 breakfast attendant duties."

17 A. Yes.

18 Q. Is that true?

19 A. Best of my knowledge. I'm assuming it's that
20 same day she came in, we had that talk.

21 Q. So you are saying the following Monday after the
22 16th is the first time that you met Mrs. Palmer; is that
23 correct?

24 A. It's either that Monday or the Wednesday. I'm



1 not correct on what day it was. I thought it was the
2 Wednesday when she came in to get her paycheck. But I
3 think, again, it's the Monday. So I'm not sure.

4 Q. So you are not sure if it's the Monday or the
5 Wednesday?

6 A. Correct.

7 Q. But it is your testimony that the day that you
8 did meet with her is the same day that you terminated
9 her; is that correct?

10 A. Correct.

11 Q. Going down to the fourth paragraph where it says
12 Ms. Palmer had several desk complaints, is it the case
13 that you represented to Miss Hawthorne that there were
14 guest complaints after her first weekend of working?

15 A. Yes.

16 Q. Did you ever represent to her that you would
17 supply her with those guest complaints?

18 A. I don't recall.

19 Q. In the last paragraph it says she was let go due
20 the insubordination; is that correct?

21 A. Correct.

22 Q. Does it appear that in this letter dated December
23 10th, 2004, that the reason that she was let go at that
24 meeting was due to insubordination?



1 A. I'm sorry. What was the question?

2 Q. Is the only reason that's indicated in this
3 letter for Mrs. Palmer's termination was because of
4 insubordination; is that the reason that's given in this
5 letter?

6 A. It seems to be.

7 Q. Is there a reason why no other reason was
8 indicated as far as why Mrs. Palmer was terminated in
9 this letter, December 10th, 2004?

10 A. I don't recall.

11 Q. So today, in 2006, it's your testimony that not
12 only was it the scheduling, which is what you indicated
13 was the sole reason in 2004, in the April 14th letter,
14 2004, that she was let go simply due to scheduling
15 conflicts; is that correct?

16 MR. CONNORS: Object to form.

17 Q. Is it the case that in the April, 2004, letter to
18 the EEOC you indicated the sole reason for Mrs. Palmer's
19 termination was because of a scheduling conflict; is that
20 correct?

21 MR. CONNORS: Object to the form.

22 Q. Is that correct? You can answer.

23 MR. CONNORS: The letter speaks for itself.

24 MS. SMITH: And I'm asking if this is



1 accurate, if this is the sole reason that she gave in
2 April, 2004.

3 MR. CONNORS: I object to the form of the
4 question. You may answer.

5 MS. SMITH: She can answer it.

6 THE WITNESS: I would say yes.

7 BY MS. SMITH:

8 Q. And then later in December, 2004, your reason for
9 terminating Ms. Palmer is insubordination; is that
10 correct?

11 A. Yes.

12 Q. Is there a reason why the reasons are not
13 similar, or different I should say between the April,
14 2004, letter and the December 10th, 2004, letter?

15 MR. CONNORS: Object to the form. You may
16 answer.

17 THE WITNESS: I thought they were one in the
18 same.

19 BY MS. SMITH:

20 Q. Scheduling conflicts and insubordination are the
21 same?

22 A. Yes, to me it was because I needed her to work a
23 certain schedule. And she refused to work that schedule.
24 She already had a set schedule before we took over. So



1 that was insubordination of what I needed her to work, to
2 do at the Sleep Inn.

3 Q. So an employee's conflict of schedule, it's the
4 Sleep Inn's policy that they are not allowed to have a
5 conflict of schedule and that is, therefore,
6 insubordination?

7 MR. CONNORS: Object to form. You may
8 answer.

9 THE WITNESS: Yes.

10 (Payne Deposition Exhibit No. 11, Receipt
11 and Acknowledgment of Employee Handbook, was marked for
12 identification.)

13 BY MS. SMITH:

14 Q. Have you finished reviewing Payne 11?

15 A. Yes.

16 Q. In Payne 10 at the end, the last sentence you
17 say, "I have enclosed a copy of Receipt and
18 Acknowledgment of Employee Handbook which has been signed
19 by Ms. Palmer that mentions that Sleep Inn has the right
20 to terminate employment at any time with or without
21 reason." Did I read that correctly?

22 A. Yes.

23 Q. And on the bottom it's ENC, marked enclosure?

24 A. Yes.



1 Q. Payne 11, did you enclose that with that
2 document?

3 A. I assume I did.

4 Q. Did you recognize that document, Payne 11?

5 A. Yes.

6 Q. Do you recognize the name at the bottom of the
7 document?

8 A. Yes.

9 Q. What is the name that you see there?

10 A. Islyn Palmer.

11 Q. Over employee print name and employee signature?

12 A. Islyn Palmer.

13 Q. And the date that she signed it?

14 A. August 9th.

15 Q. Was that after you began working --

16 A. Yes.

17 Q. -- for Sleep Inn?

18 A. Yes.

19 Q. And are you the only person in charge of keeping
20 the files for employees or are there other managers in
21 charge of that?

22 A. No. I'm in charge of keeping employees' files.

23 Q. Do you know where that would have been kept, that
24 document?



1 A. That would have been kept in our personnel file.

2 Q. Is it your testimony that you never saw this
3 document before you terminated Ms. Palmer?

4 A. I don't recall seeing it, no.

5 Q. But you do note there that the date that she
6 signed it was August 9th, 2003?

7 MR. CONNORS: Object to the form of the
8 question. You may answer it.

9 BY MS. SMITH:

10 Q. Is that the date that's indicated on that
11 document?

12 A. Yes.

13 Q. And when you supplied this document to the EEOC
14 and enclosed your letter, did you believe that that was
15 an accurate, that the information on that document,
16 including signatures, was accurate?

17 A. Yes.

18 MR. CONNORS: Object to the form of the
19 question.

20 BY MS. SMITH:

21 Q. Earlier you testified that the first time you
22 knew that Mrs. Palmer was employed was the Monday or
23 Wednesday following the weekend of August 16th and 17th,
24 2003; is that correct?



1 A. Yes.

2 Q. But it's also your testimony that that document
3 would have been in an employee file that only you would
4 have had access to; is that correct?

5 A. Yes.

6 Q. Is there a reason why that document dated August
7 9th, 2003, was not known to you before August 20th of
8 2003?

9 A. I did not have her sign this document.

10 Q. I didn't ask that. I just asked: Is there a
11 reason why you did not know of the existence of her
12 personnel file or that document before August 20th of
13 2003?

14 A. I'm sorry. What was the question?

15 Q. The question was: Is there a reason why you
16 would have no knowledge of that document prior to August
17 20th, 2003?

18 A. The reason I would not have no knowledge?

19 Q. Why you would have no knowledge, why you wouldn't
20 know about that document.

21 A. It could have been it was signed and put in her
22 file without me knowing because my office is an open door
23 office. So it could have been turned in at the front
24 desk and they put it in her file without me knowing it.



1 Q. So when you testified that you are the only
2 person with access to the employee personnel files, that
3 was incorrect; is that true?

4 A. Well, I have an open -- they are not supposed to
5 go in there. It's not a locked cabinet. But I'm not
6 saying they don't.

7 Q. Have you ever had any other instances where
8 individuals have gone and put things into files and you
9 had no knowledge?

10 A. Yes. Actually, my front desk manager would go
11 into the files.

12 Q. So your front desk manager also has access to the
13 personnel files?

14 A. Yes.

15 Q. Do you know the name of the front desk manager at
16 the time in August of 2003?

17 A. Just her first name.

18 Q. What is her first name?

19 A. Her first name is Chris.

20 Q. Christine?

21 A. Yes.

22 MS. SMITH: I'll make a request for the full
23 name of the front desk employee and I'll put that in
24 writing.



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1 BY MS. SMITH:

2 Q. When was the first time that you saw this
3 document?

4 A. I don't recall.

5 Q. When you submitted this document to the EEOC,
6 what was your purpose in doing that, in including this
7 document with your response to the charge of
8 discrimination?

9 A. Well, I was trying to state that I thought, you
10 know, that Delaware was an at will employee and that she
11 had signed the handbook of that at will employment.

12 Q. She had signed and dated that Payne 11?

13 A. Yes.

14 Q. And it's your testimony that you supplied that
15 document to show that she had read and received this
16 handbook and that as an employee at Sleep Inn at the time
17 she was aware of her rights as an employee; is that
18 correct?

19 A. Correct.

20 Q. So when you submitted this, did you believe that
21 she was employed on August 9th of 2003?

22 A. Yes.

23 Q. But you testified that you had no knowledge that
24 she worked there until after August 9th, 2003; is that



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1 correct?

2 A. Correct.

3 Q. So which is correct, which is true, did you know
4 that she worked August 9th, 2003, or did you know on
5 August 20th that Ms. Palmer was employed by Sleep Inn?

6 A. I knew the day that she came in.

7 Q. But no time before that?

8 A. No. Because that was when I did the time cards,
9 the payroll and everything.

10 Q. You began working on August 4th?

11 A. Yes.

12 Q. 2004. Excuse me. 2003. And that was a Monday.
13 What days did you normally do the payroll? Do you
14 systematically do them on the same day?

15 A. I did payroll every other Monday for employees to
16 get paid on Wednesday.

17 Q. So the Monday that you worked you did not do any
18 payroll; is that correct?

19 A. Correct.

20 Q. The weekend after, did you do any payroll?

21 A. No, not that I recall.

22 Q. So one Monday went by, no payroll, the next
23 Monday no payroll. So it's two Mondays you did no
24 payroll?



1 A. I don't think so.

2 Q. At that time, was it every other Monday or was it
3 customary for you to miss consecutive Mondays to do
4 payroll?

5 A. We get paid biweekly. So they would work the 4th
6 for that Sunday. The pay period was Sunday -- Monday
7 through Sunday. So they would work that Monday, work the
8 following week, and then the following Monday I would do
9 payroll for them to get a two-week paycheck.

10 Q. So the two weeks after that would be the 18th of
11 August of 2003. That's 14 days after August 4th. And
12 you said there was time cards that you had to use?

13 A. Correct.

14 Q. Punch cards?

15 A. Correct.

16 Q. When is the first time that you saw the punch
17 cards?

18 A. I don't remember.

19 Q. But you did notice Miss Palmer's punch card on
20 the 18th?

21 A. I'm assuming I did.

22 Q. And what was your reaction if you did not know
23 that she was already employed?

24 A. Who is this employee?



1 Q. Did you refer to the old schedule that you have
2 with her name on it?

3 A. I don't remember.

4 Q. At that time, did you have the old schedule with
5 her name on it?

6 A. I don't remember.

7 MS. SMITH: We can have the court reporter
8 go back when we talked about the old schedules.

9 (Thereupon, the reporter read back as
10 requested.)

11 BY MS. SMITH:

12 Q. So that week that you first started using punch
13 cards, were they already the same punch cards that had
14 been in existence or did you create new punch cards?

15 A. I don't remember. I'm assuming I created new
16 ones.

17 Q. And how did you create new punch cards?

18 A. They are just blank cards.

19 Q. Actually, strike that. How did you know what
20 employees to place on the punch cards?

21 A. I didn't do that. The employees put their own
22 names on their punch cards.

23 Q. How did you know how many punch cards to set
24 aside for employees?



1 A. There are just a handful back there. I didn't
2 count.

3 Q. So is it your testimony that any individual could
4 put in a punch card, that you had no knowledge that they
5 were employed but they could put in a punch card for a
6 paycheck?

7 A. They could, yes.

8 Q. Would you then pay that individual?

9 A. No.

10 Q. What would you do?

11 A. Because the pay would be on whose name is already
12 listed.

13 Q. And in Miss Palmer's case, you said earlier who
14 is this person?

15 A. Right.

16 Q. And then what was your next step after you saw
17 her punch card and you realized you had never heard of
18 her before? What was your next step?

19 A. Well, I saw that she works. The next step was to
20 pay her.

21 Q. So you just testified that you would not normally
22 pay someone that you didn't know was an employee of Sleep
23 Inn; is that correct?

24 A. Correct.



1 Q. So in Miss Palmer's case, you didn't know she was
2 an employee but you paid her anyway?

3 A. Correct.

4 Q. Is there a reason why?

5 A. Because I would -- I don't know. I guess I'm an
6 honest person. I'm thinking if she knew where the time
7 clock was and knew where the cards were, she must be an
8 employee there.

9 Q. You didn't think about maybe asking around if she
10 was really an employee before you paid her?

11 A. I could have. I don't remember.

12 (Thereupon, a discussion was had off the
13 record.)

14 BY MS. SMITH:

15 Q. When you met with Mrs. Palmer the day you
16 terminated her, did you mention to Mrs. Palmer that there
17 were customer complaints against her?

18 A. I don't remember.

19 Q. And you said that you wanted a full-time employee
20 and you discussed schedule. Did you discuss any other
21 departments that Mrs. Palmer could work in?

22 A. I thought I did.

23 Q. What specific departments did you offer
24 Mrs. Palmer?



1 A. The housekeeping.

2 Q. And what duties would that entail?

3 A. Cleaning rooms and doing the hallways.

4 Q. And I think you testified earlier that all the
5 different departments and positions were going to be
6 full-time; is that correct?

7 A. Correct.

8 Q. Was anyone else present in the meeting that you
9 had with Mrs. Palmer?

10 A. I don't recall.

11 Q. Was it just you and Mrs. Palmer?

12 A. I think so.

13 Q. Would there have been anyone else?

14 A. Unless her daughter -- I know I met her daughter
15 once because she came down and gave me an earful.

16 Q. When was this?

17 A. I guess after I let Ms. Palmer go, shortly after
18 that.

19 Q. You had you terminated Ms. Palmer on the 20th of
20 August, 2003?

21 A. Sounds right.

22 Q. And that you had gotten a call from her daughter
23 that day and that you sent a letter that same day
24 indicating that Mrs. Palmer was terminated; is that



1 correct?

2 A. Correct.

3 Q. So you are saying that same day, that her
4 daughter received that letter the same day or you met her
5 after August 20th?

6 A. Oh, I don't recall. I remember her daughter
7 calling and saying that she needed a letter to say that
8 her mom was no longer working there. That's why it's
9 made out to whom it may concern.

10 Q. Have you ever disciplined any other employees
11 that worked for you?

12 A. Since I have been there?

13 Q. Yes.

14 A. Yes.

15 Q. And do you recall what types of discipline that
16 you had to issue to employees?

17 A. Well, I've had to actually fire, verbal and
18 written.

19 Q. I'm sorry?

20 A. You said to discipline? I fired. I've written
21 and the verbal.

22 Q. Okay. When you verbally disciplined someone, do
23 you remember what the infraction was for that you had to
24 issue verbal discipline?



1 A. No, I don't remember.

2 Q. What about the written discipline?

3 A. It would be in their file.

4 Q. Do you remember an employee by the name of
5 Petronila Corral?

6 A. Yes.

7 Q. Was she an employee of Sleep Inn?

8 A. Yes.

9 Q. Is she still working for Sleep Inn?

10 A. No.

11 Q. Do you remember what her dates of employment
12 were?

13 A. No.

14 Q. Did she work under you?

15 A. Yes.

16 Q. And do you know why she no longer works for Sleep
17 Inn?

18 A. No.

19 Q. Did you terminate Miss Corral?

20 A. I don't remember.

21 Q. The individuals that you had to terminate, do you
22 remember what the reasons were for their termination?

23 A. Mostly terminate, majority is because they do a
24 no call, no show.



1 Q. Meaning they don't show up to work?

2 A. Correct.

3 Q. And is that grounds for immediate termination?

4 A. Yes.

5 Q. And it's your testimony that you don't recall
6 giving any written warnings to any other employee
7 specifically?

8 MR. CONNORS: Object to the form.

9 Q. I will rephrase. Is it your testimony that you
10 have not given any written warnings to or that you cannot
11 recall the basis for the written warnings that you may
12 have given to any other employees?

13 A. No, I don't recall.

14 Q. Do you recall an employee who was attempting to
15 start a union?

16 A. No.

17 MS. SMITH: Go off the record for one
18 minute. I may be done.

19 (Off the record.)

20 (Payne Deposition Exhibit No. 12, Letter
21 From Joan Payne Dated December 10, 2004, was marked for
22 identification.)

23 BY MS. SMITH:

24 Q. And I'm just drawing your attention the question



1 where it says Question Number 1. It's really just the
2 first paragraph on Payne 12.

3 A. Yes.

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. Is that your signature at the bottom?

7 A. Yes.

8 Q. Is this a letter to Miss Evangeline Hawthorne
9 from the EEOC?

10 A. Yes.

11 Q. And this is dated December 10th, 2004; is that
12 correct?

13 A. Yes.

14 Q. Do you recognize any of the names in Question 1?

15 A. Some of them, yes.

16 Q. Do you recall if these individuals were
17 terminated or did they leave voluntarily from employment
18 with Sleep Inn?

19 A. I don't remember.

20 MS. SMITH: That's all I have.

21 MR. CONNORS: I have a few questions for
22 you.

23 EXAMINATION

24 BY MR. CONNORS:



1 Q. Previously you testified that you did not know
2 Ms. Palmer's age, correct?

3 A. Correct.

4 Q. Did Ms. Palmer's age factor, in any way, in your
5 decision to terminate her?

6 A. Absolutely not.

7 Q. Now, there was some discussion previously about
8 guest comment cards that have the date of August, 2004,
9 as opposed to August, 2003?

10 A. Correct.

11 Q. When these comment cards were provided, might
12 they have been provided in error because you were
13 searching for them by the August date?

14 A. Oh, I see what you are saying. Yeah, that could
15 have been, yes.

16 Q. So these might not apply to this?

17 A. Correct.

18 Q. And if they don't apply, they were supplied to
19 you in error. However, Ms. Smith asked you about the
20 warning notice that was given, that you wrote up relating
21 to Ms. Palmer, correct?

22 A. Correct.

23 Q. And in that you said verbal warning was given due
24 to Ms. Palmer's work ethics. After meeting, Ms. Palmer



1 was let go as to work performance and scheduling
2 conflicts. The work performance, was that based upon
3 verbal complaints that were made to you?

4 A. Yes.

5 Q. The when you were hired as general manager, did
6 you become familiar with the employee handbook?

7 A. Not right away, no.

8 Q. Can you tell me about how soon after you were
9 employed that you became familiar with it?

10 A. I'm trying to think when we even had it together.
11 Maybe a month, two months later.

12 Q. That's when you thought you looked at it for the
13 first time?

14 A. Yes.

15 Q. Well, in that book, that handbook there is a Code
16 of Conduct, correct?

17 A. Yes.

18 Q. And does it not state in part, "The following are
19 examples of some but not all of the conduct which may
20 result in immediate termination of the employment
21 relationship without warning?" Is that what it says?

22 A. Yes.

23 Q. And is insubordination one of the examples of
24 conduct that may result in immediate termination without



1 warning?

2 A. Yes.

3 Q. And if an individual was the subject of verbal
4 complaints about her job duties, keeping the breakfast
5 station filled with supplies and clean, would that
6 constitute a failure to carry out position
7 responsibilities?

8 A. Yes.

9 Q. And if you asked or required an employee to be
10 full-time or work a particular schedule, would that
11 constitute a reasonable work request of management?

12 A. Yes.

13 Q. And if an individual in your employ did not carry
14 out position responsibilities properly or did not concede
15 to or agree with a reasonable work request of management,
16 perhaps bearing on a schedule, would you view that as
17 insubordination?

18 A. Yes.

19 Q. And would you agree that under the Code of
20 Conduct, that person could be immediately terminated
21 without warning?

22 A. Yes.

23 MR. CONNORS: Those are all the questions I
24 have. Thank you.



EXAMINATION

1
2 BY MS. SMITH:

3 Q. Miss Payne, just to clarify, you just told
4 Mr. Connors that you did not become familiar with this
5 Code of Conduct until one month after you started working
6 at Sleep Inn; is that correct?

7 A. Correct, thereabouts.

8 Q. So you were not familiar with this Code of
9 Conduct when you decided to terminate Mrs. Palmer; is
10 that correct.

11 A. I don't remember. Yes. I don't remember reading
12 the code, you know, the employee handbook in detail by
13 the time I terminated her, no.

14 Q. Okay. Well, just to clarify the question, I just
15 need a yes or no. Were you familiar with the specifics
16 of the Code of Conduct at the time you terminated
17 Mrs. Palmer?

18 A. Not in detail, no.

19 Q. Were you familiar with Page 14 of the Code of
20 Conduct when you terminated --

21 A. I don't remember.

22 Q. I'll finish the question. Were you familiar with
23 Page 14 of the Code of Conduct when you terminated
24 Mrs. Palmer?



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1 A. I don't remember.

2 Q. And when you cited insubordination as one of the
3 reasons for Mrs. Palmer's termination, did you have any
4 of the details listed on Page 14 of the Code of Conduct
5 in mind when you terminated Mrs. Palmer for that reason,
6 for insubordination?

7 MR. CONNORS: Object to the form.

8 Q. I'll rephrase the question. You are probably
9 still going to object.

10 Did you have any of the specifics of Page 14
11 of the Code of Conduct in mind when you terminated
12 Mrs. Palmer's employment?

13 A. I don't remember.

14 Q. But you do recall that you did not become
15 familiar with this Code of Conduct until one month after
16 your employment with Nabstar, which was after Mrs. Palmer
17 is terminated; is that correct?

18 MR. CONNORS: Object to the form, also
19 mischaracterizes her testimony. The record will speak
20 for itself.

21 THE WITNESS: I knew we had the handbook. I
22 glanced through it. I did not read it in detail.

23 BY MS. SMITH:

24 Q. Until one month after your start of employment;



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1 is that correct?

2 MR. CONNORS: Object to the form. You may
3 answer.

4 THE WITNESS: Yes.

5 MS. SMITH: For clarification, did you tell
6 Mr. Connors that -- can we just read back the testimony?

7 (Thereupon, the reporter read back as
8 requested.)

9 BY MS. SMITH:

10 Q. So you testified that the first time you looked
11 at the Code of Conduct was one month after your
12 employment; is that correct?

13 A. Yes.

14 MS. SMITH: Thank you.

15 MR. CONNORS: We will read and sign. You
16 have the right to have the court reporter transcribe this
17 and have the transcript issued to the parties without you
18 having a chance to read it and make changes according to
19 our Delaware rules, federal rules. And as your attorney,
20 we will read and sign.

21 (Thereupon, the deposition concluded at
22 12:50 p.m.)

23

24



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